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[Report : Mr. Hoar]

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IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1896.—Ordered to be printed.

Mr. HOAR, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany S. 2272.]

The Committee on the Judiciary, to whom was referred the bill (S. 2272) to fix the salaries of the chief justice and judges of the Court of Claims, respectfully report:

By some legislative inadvertence the compensation of the judges of the Court of Claims has been overlooked for a period of twenty-four years, while the salaries of almost all other officers of the Government—legislative, executive, and judicial—have been adjusted to meet the increased expenses of modern life, as will appear in the following tables:

In February, 1855—	
The salary of the judges of the Court of Claims was	$4,000
The pay of Senators and Representatives ($8 a day) was, say	1,500
The salary of the judges of the Supreme Court	4,500
The salary of the judges of the District of Columbia	2,300
The salary of the President	25,000
At the present time—	
The salary of the judges of the Court of Claims is	4,500
The salary of Senators and Representatives	5,000
The salary of the judges of the Supreme Court	10,000
The salary of the judges of the District of Columbia	5,000
The salary of the judges of the district court of appeals	6,000
The salary of the President	50,000
If the salary of the judges of the Court of Claims had been increased—	
In the ratio of the President's, it would now be	8,000
In the ratio of Senators and Representatives	13,333
In the ratio of the judges of the Supreme Court	8,884
In the ratio of the District of Columbia judges	8,000
And if the salary recently attached to the District court of appeals be taken as a criterion, it would be for the judges	6,000
And for the chief justice	6,500

It is now forty-one years since the Thirty-third Congress established the Court of Claims and fixed the salary of the judges at $4,000. The pay of the Members of that Congress ($8 a day) could not have exceeded $1,500 a year as their average annual compensation, yet they did not hesitate to attach to this court a salary which was nearly three times their own, and but $500 less than that of the Supreme Court, and which was then sufficient to command the experience, integrity, and ability peculiarly needed in the judges of such a court.

It is twenty-four years since any attempt was made to increase the salary, and then by some mischance, which can not now be explained, a conference committee having charge of the legislative, executive, and judicial appropriation bill placed the increase at $500 when each of the Houses had separately voted to make it $1,000.

While there has been on the one hand this remarkable legislative inadvertence as regards the compensation of the judges, there has been on the other an even more extraordinary increase of their labors and responsibilities. To the general jurisdiction of the court Congress has, from time to time, added a great number of subjects of special jurisdiction which, in the magnitude of the amounts involved and the novel and varied character of the cases tried, probably exceeds that of any other court of original jurisdiction in the world.

The captured-property cases related to a fund in the Treasury of $31,722,466.20, and presented questions of law then absolutely novel and of the gravest character. The amounts claimed reached the enormous aggregate of $77,785,962.10, and the recoveries against the fund $9,833,423.16. (See 18 C. Cls. R., 700.)

The Hot Springs (of Arkansas) cases brought six different titles to the property before the court, prosecuted by six adverse parties, one of whom was the United States. Three of the contending claimants had been in possession of that valuable property for fifty years, and their litigation between themselves had gone on for thirty years, their suits more than once coming up to the Supreme Court, but always without a final result.

The Court of Claims, when this subject of litigation was added to its jurisdiction, assumed the functions of a court of equity, brought the conflicting titles to an issue in one suit, adjudged the Government to be the owner of the town of Hot Springs as well as of the springs themselves, ousted the intruders, and put a receiver in possession of the property. Its action was affirmed by the Supreme Court, and the United States then and thereby acquired possession of their own lands of which they had been dispossessed for half a century. (10 C. Cls. R., 289.) The improvement which has taken place in the moral and sanitary condition of that great natural sanitarium since the judgment of the Court of Claims was rendered is one which benefits thousands of the people of this country; and it is safe to say that that property—the town and the springs—at the present time exceeds in value to-day all the judgments that have been recovered against the Government in this court.

Congress have also invoked the assistance of the Court of Claims in cases which were not based on claims against the United States.

The first of these were the claims of contractors against the District of Columbia, growing out of the city improvements made or instituted by the territorial or Shepherd government. These have all been tried and disposed of, and are at an end.

Congress have also authorized the court to hear some very remarkable cases, being those of the Delawares, Shawnees, and freedmen of the Cherokees, not against the United States, but against the Cherokee Nation. These cases presented the novel spectacle of Indian tribes voluntarily seeking a judicial forum of the United States to settle their own financial difficulties.

The cases involved more than a million dollars, and were determined by the constitution and laws of the Cherokee Nation. They also involved difficult and novel questions of communal ownership, and represented more than 4,800 communal owners, each of whom claimed a several and personal interest in the subject of litigation—the proceeds of their lands. These cases have been affirmed by the Supreme Court, and these intestine difficulties of the Cherokee Nation happily brought to an end by the interposition of this court of the United States.

In the Mexican award cases—cases growing out of awards against Mexico under the treaty of 1868—the Government instead of appearing in its usual character of defendant has gone into the Court of Claims, under a special act of Congress, as complainant and filed a bill in equity to vacate and set aside awards against Mexico, on the ground that they were procured by fraud. The cases involve more than $500,000, and some most important principles of international and municipal law in which the honor of the United States is likewise involved.

It is also to be remembered that most valuable service has been rendered by this court in exposing and preventing frauds against the United States, and that immense amounts have been saved to the Government by judicial investigation. In the case of De Groot (5 Wall. R., 419), an Executive Department had awarded the claimant $119,234; in the case of Gordon (7 id., 188), $66,519; in the case of Chorpenning (94 U. S. R., 397), $443,010. In all of these cases judgment was against the claimant, yet the record in Gordon's Case discloses these extraordinary facts:

There had been allowed and paid to the claimant for property destroyed by United States troops $8,873; then $100 for an error of calculation in the first "award;" then $8,997.94 for interest; then $10,004.89 for more interest; then $39,217.50 for property previously found not to have been destroyed by United States troops; and finally, $66,519.85 on a "revision" of the previous awards. This last allowance had not been paid to the claimant, and his suit to recover it brought the matter into the Court of Claims and made public the payments which had been made.

In the Chorpenning case the claimant had previously brought the same claim before the court by a suit, in which he demanded only $176,576. (3 C. Cls. R., 140.) Judgment went against him, and he then went to Congress, and on the last night of the session obtained a reference of his claim to the Postmaster-General (16 Stat. L., p. 673), by whom he was allowed, as above stated, $443,010. Before this was paid the matter attracted public attention. Payment was suspended and the claimant compelled to go into the Court of Claims, which again decided against him.

The danger of the legislative and executive branches of the Government investigating cases on the ex parte evidence of the claimants may be further illustrated. Since the expiration of the captured-property act, Congress has, by special acts, referred five cotton cases to the court, acting on the strongest ex parte evidence—the affidavits of apparently respectable witnesses. The aggregate of the amounts claimed was $1,169,192.57. In only two of them did the parties recover, and the aggregate of these two recoveries was only $146,523.41, leaving an unfounded balance of $1,022,669.16. In one of these cases the opening paragraph of the opinion thus describes it (25 C. Cls. R., 446):

> This is an extraordinary and important case. It is extraordinary on account of many matters appearing in its history and testimony; important because of the large amount of money in controversy and the questions of law involved in its decision. The attention of the court was occupied many days on the trial, and counsel have exhausted the resources of great professional ability in the presentation of the law and evidence. More than 2,000 printed pages of testimony have been discussed and considered in the determination of the questions of law and fact presented by this record. More than 150 witnesses have been examined, many of whom have been questioned to an extent most unusual in judicial investigation. Many of them have the highest intelligence, while others have the lowest order of mental capacity. Some are subject to the influence of a great interest in the result of the cause, while others are impressed by great prejudice against one side or the other.

The last annual report of the Attorney-General shows of claims adjusted during the preceding year that the aggregate of the amounts

claimed was $3,971,302, but the aggregate of amounts allowed by the court $1,371,622.

So long as claimants can appear at the bar of Congress or before the Executive Departments and say that injustice has been done to them, so long a sense of right and natural sympathy will prompt relief; and experience shows that the more fictitious the claim, the more plausible it can be made to appear. Since such transactions as the above can be brought to light through judicial proceedings, they have wholly ceased. It must now be taken as a fixed fact that hereafter, as at present, demands against the Government must be investigated and, so far as possible, finally determined by a judicial tribunal.

Assuredly, then, it seems most unjustifiable to single out the judges on whose integrity and ability the Government depends for protection, and leave them the only judges whose remuneration receives no attention from Congress.

To the foregoing instances of special jurisdiction might be appended a long list of claims which have been referred to this court, some by public and some by private acts of Congress, such as the claims of Indian tribes against the United States (the Eastern Cherokees, the Western Cherokees, the Choctaw Nation, the Miamis, the Pottowatomies, the New York Indians); such as the Indian depredation claims, numbering more than 10,000, which had been many years in Congress awaiting legislative action; such as the French spoliation cases, cases of the last century, involving as intricate questions of international and mercantile law as ever perplexed a court; such as the Carondelet Commons case, where the title to 6,050 acres of what is now a part of the city of St. Louis was in dispute, and $2,420,000 involved in the litigation.

In a single suit in the Court of Claims, one of the Pacific Railroad cases (20 C. Cls. R., 112)—

The Government recovered on its counterclaim	$4,487,807.39
And the claimant on its demand	2,910,124.18
And the Government had judgment for the balance	1,577,683.21

Thus the extraordinary fact appears that the largest amount recovered in the Court of Claims was recovered by the United States. If this recovery of $4,487,807.39, and the value of the town of Hot Springs, and a number of recoveries by the Government on other counterclaims were reckoned up, it is not improbable that the still more extraordinary fact would appear that the Government has recovered more in this court than has been recovered against it.

The aggregate of judgments against the United States rendered by the Court of Claims from 1867, when the annual reports of the clerk begin, to 1895, both inclusive, is $38,185,049.17. This does not include Congressional or French spoliation cases where the facts are reported for the consideration of Congress, but does include the decrees rendered against the captured-property fund. Subtracting them, $9,833,423, will leave as the aggregate of judgments against the Government on its liabilities proper for the last twenty-nine years the sum of $28,351,626.17. The amount claimed in those suits was about $169,000,000.

It may therefore be reiterated that while the compensation of the judges of the Court of Claims has been singularly overlooked, no judges in the United States have been so weighted with personal responsibility, and no court has had such vast, and varied and difficult subjects of jurisdiction committed to it, or has received more repeated manifestations of trust and confidence from the legislative power.

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